MOTION FILED
JAN 15

(4) (3)

Nos. 86-781 & 86-793

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

KANSAS GAS & ELECTRIC COMPANY,
Appellant,
v.
STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

KANSAS CITY POWER & LIGHT COMPANY,
Appellant,
v.
STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

On Appeal from the Supreme Court of Kansas

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE EDISON ELECTRIC INSTITUTE IN SUPPORT OF JURISDICTIONAL STATEMENTS

ROBERT L. BAUM
Counsel of Record
PETER B. KELSEY
WILLIAM L. FANG
JAMES H. BYRD
EDISON ELECTRIC INSTITUTE
1111 19th Street, N.W.
Washington, D.C. 20036
(202) 778-6500

January 15, 1987

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-781

KANSAS GAS & ELECTRIC COMPANY,
Appellant,

v.

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

No. 86-793

KANSAS CITY POWER & LIGHT COMPANY,
Appellant,

v.

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

On Appeal from the Supreme Court of Kansas

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rules 36 and 42 of the Rules of the United States Supreme Court (the Court), the Edison Electric Institute (EEI) respectfully moves this Court for leave to file the brief *amicus curiae* annexed hereto.[1]

---

[1] While the appellants and the Johnson County Joint Intervenor Group have consented to the filing of the attached brief *amicus curiae*, the State Corporation Commission of the State of Kansas, Attorney General of the State of Kansas, Alliance for Liveable

INTEREST OF EDISON ELECTRIC INSTITUTE

EEI is the association of the nation's investor-owned electric utility companies. Its members serve 96 percent of all customers of the investor-owned segment of the electric utility industry and serve 73 percent of the nation's consumers of electricity.

Over the last four decades the Fifth and Fourteenth Amendments' constitutional limitations on state ratemaking authority have been etched into the law. Since decisions in *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575 (1942) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), this Court has freed state regulatory commissions to employ whatever ratemaking methods or formulas they may choose so long as the "end result" of state rate orders is a just and reasonable balancing of investor and consumer interests. *Hope* and its progeny [2] require state commissions to protect ratepayers from "exploitative" rates and, to the extent it may be accomplished without injuring legitimate public interests, to provide a return on investment sufficient to maintain the financial integrity of the company.

Increasingly in recent years, and starkly illustrated in this particular case, courts and commissions in effect have sacrificed the financial security of utilities when fashioning a purported balance of the customer and investor interests required by *Hope*. In doing so, these bodies have misapplied the *Hope* doctrine. The decisions

---

Electric Rates, and Cities of Wichita, Cheney, Clearwater, Derby, Garden Plain, Goddard, Kechi, Potwin and Whitewater, Kansas have not consented to EEI's participation. The letters providing consent have been filed with the Clerk of the Court.

[2] See, *e.g.*, *In re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Federal Power Commission v. Memphis Light, Gas & Water Division*, 411 U.S. 458 (1973).

of the Kansas Corporation Commission (KCC) in this case, endorsed as they were by the Kansas Supreme Court, are an extreme example. The Kansas Court made scant mention of the *Hope* criteria, and made no effort to determine if the "end result" of the KCC's orders represented a balance of ratepayer and investor interests. Yet, as the jurisdictional statements of Kansas City Power & Light Co. (at pp. 6-7, 11-13) and of Kansas Gas and Electric Co. (at pp. 14-15) make absolutely clear, the financial consequences for appellants—and, in the long run, for their investors *and* ratepayers—are ominous.

This appeal represents a critical juncture both for the nation's investor-owned electric utilities and for the rule of law established by this Court in *Hope*. For the *Hope* doctrine to have meaning and continuing validity, the Court must remind state regulators that the investor interest component of the *Hope* equation is more than a hollow phrase to be honored in the breach. Reaffirmation of the *Hope* doctrine can wait no longer. Currently 22 nuclear generating units are in various stages of construction or completed awaiting final rate decisions, representing more than $65.5 billion of current and projected capital investment. If the grim trend of recent disallowances continues unchecked, investors could face confiscatory disallowances of billions of dollars of invested capital, representing a substantial portion of the common stock equity of companies with nuclear units. While the focus of this case is on investment in nuclear units, the principles at stake apply with equal force to power plants using other fuels and to other utility investments subject to ratemaking.

As the national association of investor-owned electric utilities, EEI is in a position to reflect the impact of the issues raised in this appeal from a broad perspective. The attached brief *amicus curiae* demonstrates that the questions arising in the instant case are substantial, with

broad future implications for the nation's electric utilities, their ratepayers and the investors who provide the capital necessary to maintain the reliability and effectiveness of the nation's electric utility systems.

CONCLUSION

For the reasons set forth above and in the attached brief, EEI urges this Court to grant its motion for leave to file the attached brief as *amicus curiae.*

Respectfully submitted,

ROBERT L. BAUM
Counsel of Record
PETER B. KELSEY
WILLIAM L. FANG
JAMES H. BYRD
EDISON ELECTRIC INSTITUTE
1111 19th Street, N.W.
Washington, D.C. 20036
(202) 778-6500

January 15, 1987

QUESTIONS PRESENTED

Edison Electric Institute adopts the questions presented set forth in the jurisdictional statements of appellants Kansas Gas and Electric Company and Kansas City Power & Light Company.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
INTEREST OF *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	3
REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION FOR THEIR RESOLUTION	6
I. State Ratemaking Agencies And Courts Have Undermined And Continue To Undermine The Constitutional Framework For State Regulation Of Utility Rates Established By This Court	6
II. These Appeals Are Stark Examples Of The National Trend Of Recent Unconstitutional State Ratemaking Disallowances	12
III. The Kansas Court's Affirmance Of The KCC Orders Abrogates The Compact Underlying The American System of Utility Rate Regulation	15
CONCLUSION	19

TABLE OF AUTHORITIES

CASES: Page

Capital Transit Co. v. Public Utilities Commission of the District of Columbia, 93 U.S. App. D.C. 194, 213 F.2d 176 (D.C. Cir. 1953), *cert. denied*, 348 U.S. 816 (1954) 7

Colorado Interstate Co. v. Federal Power Commission, 324 U.S. 581 (1945) 9

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) ..... *passim*

Federal Power Commission v. Memphis Light, Gas & Water Division, 411 U.S. 458 (1973) 7, 8, 11

Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575 (1942) 6

Kansas Gas & Electric Co. v. State Corporation Commission of Kansas, 239 Kan. 483, 720 P.2d 1063 (Kan. 1986) ..... *passim*

Louisiana Public Service Commission v. Federal Communications Commission, —— U.S. ——, 106 S.Ct. 1890 (1986) 12

Panhandle Eastern Pipe Line Co. v. Federal Power Commission, 324 U.S. 635 (1945) 9

In re Permian Basin Area Rate Cases, 390 U.S. 747 (1968) 7, 8, 9, 10, 11

Railroad Commission Cases, 116 U.S. 307 (1886) .. 6, 11

Smyth v. Ames, 169 U.S. 466 (1898) 6, 7

Southwestern Bell Telephone Co. v. Missouri, 262 U.S. 276 (1923) 8

Southwestern Bell Telephone Co. v. State Corporation Commission, 192 Kan. 39, 386 P.2d 515 (Kan. 1963) 7

CONSTITUTION:

U.S. Const. amend. V 6, 7

U.S. Const. amend. XIV ..... *passim*

STATUTES:

K.S.A. § 66-101b 15

K.S.A. §§ 66-128 - 66-128k, as amended by K.S.A. §§ 66-101 *et seq.* 18

MISCELLANEOUS:

Kahn, *Wall Street Journal* (Aug. 15, 1985) 16

Vancrum, *The Wolf Creek Excess Cost-Excess Capacity Bill*, 33 U. KAN. L. REV. 475 (1985) 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-781

KANSAS GAS & ELECTRIC COMPANY,
Appellant,

v.

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

No. 86-793

KANSAS CITY POWER & LIGHT COMPANY,
Appellant,

v.

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

On Appeal from the Supreme Court of Kansas

BRIEF *AMICUS CURIAE* OF EDISON ELECTRIC INSTITUTE IN SUPPORT OF THE JURISDICTIONAL STATEMENTS

Edison Electric Institute (EEI) submits its brief *amicus curiae* in support of the appeals filed by Kansas Gas and Electric Company (KGE) and Kansas City Power & Light Company (KCPL).

INTEREST OF *AMICUS CURIAE*

EEI is the national association of investor-owned electric utility companies in the United States. Its members serve 96 percent of all customers of the investor-owned

segment of the industry and 73 percent of the nation's electricity users. Appellants KGE and KCPL are both EEI members.

For more than four decades, decisions of this Court have required that federal and state regulatory agencies approving public utility rates ensure a balance between investor and consumer interests. Notwithstanding these decisions, the Kansas Supreme Court (Kansas Court) has affirmed orders of the State Corporation Commission of Kansas (KCC) which disallowed (for current return purposes) approximately $1.2 billion of what the KCC determined to be appellants' prudent investment in the Wolf Creek nuclear generating station subject to KCC jurisdiction. As demonstrated in appellants' jurisdictional statements, this staggering sum consists of more than three-fourths of the companies' prudent investment in the unit subject to Kansas ratemaking authority. These massive disallowances have tilted the balance between investor and consumer interests beyond all reason in favor of consumers (although consumer interests may very well be harmed in the long run), thereby effecting a confiscation of investors' capital.

While apparently believing such actions benefit consumers, state rate regulatory commissions which have taken or are considering such actions are in fact being short-sighted. Clearly, such state regulatory commission actions severely undermine the very basis of our economic system, which is designed to encourage private investment. Less clear, but equally true, such actions will ultimately increase the cost of capital in order to account for heightened investor risk, thereby increasing the rates that consumers must pay over time for electricity.

As detailed in the Argument below, such disallowances could deny investors a return on billions of dollars of investment in investor-owned electric utility companies with nuclear plants, representing a substantial portion of the companies' common stock equity. These companies —virtually all of whom are EEI members—include: (1)

30 electric utilities that own interests in 23 nuclear power generating units that have been completed since 1982, 15 of which have been subject collectively to more than $6.4 billion in disallowances; (2) five electric utilities that own interests in four nuclear power generating units that have been completed and placed in service but for which final determinations of the rate treatment have not yet been made; and (3) 25 electric utilities that own interests in 18 nuclear power generating units that either are under construction or have not yet been placed in service and accorded final ratemaking treatment.

SUMMARY OF ARGUMENT

For decades the essential basis for public utility regulation has been an implicit agreement between the utility and consumers: the utility provides safe and reliable electric service at just and reasonable rates to all who seek service within its service territory and relinquishes an opportunity to earn unlimited profits on successful investments; in return, the utility is entitled to rates sufficient to cover all costs prudently incurred in fulfilling its service obligations, including the going cost of capital. The parameters for utility ratemaking and the balance between consumer and investor interests within which utilities are to recover the cost of providing service and a return on investment were articulated by this Court over 40 years ago in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). State regulatory commissions may use a variety of methods of setting rates, subject only to the ultimate constitutional requirement that the "end result" be a just and reasonable balancing of consumer and investor interests within the criteria established by *Hope* and its progeny.

Over the last 15 years, events have conspired to challenge the implicit bargain between consumers and investors. The oil embargo and OPEC pricing actions of the 1970's, the concomitant increases in the price of coal, and customer responses to increased prices essentially invalidated many assumptions underlying utilities' projec-

tions of need for future generating capacity and the cost and availability of different types of generating plants. The massive changes in regulatory requirements mandated by the Nuclear Regulatory Commission (NRC) for nuclear power plants and the resulting delays in the completion of such plants during a period of rapid inflation and high costs of capital greatly increased the costs of such plants. Enactment of the Public Utility Regulatory Policies Act and the Power Plant and Industrial Fuel Use Act in 1978, in large part a legislative response to the perceived need to diversify fuel use and to encourage alternative sources of electric supply, further changed the regulatory landscape.

Yet throughout this turmoil, utilities, shouldering the obligation to provide reliable electric supply, continued to construct additional sources of generation as part of the *quid pro quo* implicit in the nation's system of utility regulation. Utilities undertook the long-range tasks of planning and constructing new facilities, many building large, baseload nuclear generating units that were themselves encouraged by the federal policy established in the Atomic Energy Act.

Construction of large nuclear units begun in the 1970's has taken or will take as many as 15 or more years from inception to completion. During this time, federal safety requirements and financing and construction costs fueled by inflation have driven up the total cost of nuclear units. Similarly, the regulatory treatment afforded new generating units has changed drastically. This case represents a paradigm of the whipsaw effect of this recent and troubling trend. Despite the fact that (1) the utilities in this case were endeavoring in good faith to uphold their end of the regulatory bargain, *i.e.*, to provide an adequate energy supply for customers at a reasonable rate, (2) the Wolf Creek plant was developed because express federal policies encouraged nuclear capacity and limited other options, (3) the unit was constructed at well below the average cost for nuclear units and (with one exception) faster than any other nuclear unit in the

post-Three Mile Island era, and (4) the unit has been enormously successful in operation, investors who provided billions of dollars to finance construction of the facility are being denied a current return on more than three-quarters of the prudent investment in the unit.

Under the guise of *post hoc* "prudence" inquiries and invoking the rubric of "risk sharing" and "assumption of the risk," regulators have slashed investments in large nuclear facilities from utilities' rate base. Ultimately, investors have been forced to bear the financial burden and consequences of completed projects considered after the fact by regulators to be undesirable. In a sense, the regulatory bargain in many states has been transformed into a "heads I win, tails you lose" proposition where the utility investors can never win. The denial of investors' opportunity to earn a market-justified profit on successful investments and the utility's duty to provide service are still held rigidly in place; however, in cases where regulators after the fact deem investments to be unneeded or unduly costly, massive disallowances preclude the utility from earning revenues sufficient to cover its cost of capital, and investors' funds are being confiscated. The asymmetry implicit in a regulatory system which produces unlimited investor risk but provides investors an opportunity to earn only a limited return on their investment can only drive up the cost of capital for utilities and drive up rates for customers in the long run.

As evidenced by the huge disallowances, state regulators have clearly lost sight of this Court's holdings in *Hope* and its progeny. The "end result" of the KCC decisions and others like them is not the balance of interests delineated by this Court. Enormous disallowances of investment in functioning generating units, not compelled by countervailing ratepayer interests, are inconsistent with the constitutional rule. As shown below, the future consequences of a continuing misapplication of *Hope* could be confiscation of investor capital amounting to billions of dollars.

These appeals present, in clearly delineated and sharply focused fashion, important issues which have potentially fateful consequences for future investment in the nation's electrical power industry. Thus, the issue of whether state legislators, commissions and courts may continue to disregard the key holdings of this Court in connection with the application of the Fourteenth Amendment to utility rate regulation is a matter of national importance.

REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION FOR THEIR RESOLUTION

EEI fully endorses the questions presented and arguments in the jurisdictional statements of appellants KGE and KCPL. These briefs demonstrate that the KCC decisions, affirmed by the Kansas Court, violated appellants' rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and, as KGE shows, violated the companies' rights to equal protection and procedural due process. Our argument below focuses on the fact that the KCC decisions effect a confiscation of the companies' property in contravention of the principles expressed by this Court in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

I. State Ratemaking Agencies And Courts Have Undermined And Continue To Undermine The Constitutional Framework For State Regulation Of Utility Rates Established By This Court.

Beginning a century ago in *Railroad Commission Cases*, 116 U.S. 307 (1886), this Court established the framework for the relationship among consumers, investors and government in the financing and conduct of regulated utility enterprises. For a period, beginning with *Smyth v. Ames*, 169 U.S. 466 (1898) and until the late 1930's, this Court sought to prescribe specific ratemaking formulas and methodologies to be employed in determining whether Fourteenth Amendment constraints had been violated. However, in *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575 (1942)

and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944), the Court abandoned that approach and substituted the "balancing of investor and consumer interests" and "end result" criteria. In *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968), this Court held that the "just and reasonable" standard of the Natural Gas Act as applied in *Hope* "coincides" with the applicable constitutional standards. *See also Federal Power Commission v. Memphis Light, Gas & Water Division*, 411 U.S. 458, 474 (1973).

Following this Court's directive, state ratemaking agencies and appellate courts, which had struggled to apply *Smyth v. Ames*, adopted the *Hope* criteria.[1] For a time, particularly in a period of relatively stable and often decreasing (in real terms) price levels for electricity, this produced predictable and workable results. Largely based on the pronouncements of this Court, hundreds of billions of dollars were invested in public utility facilities without governmental appropriations or guarantees. As a result, unparalleled electric utility service has been provided throughout the United States.

The pronouncements of this Court have been predicated on the principle that the Fourteenth Amendment (with its incorporation of the "taking" clause of the Fifth Amendment) establishes constraints on the expropriation of such investments by state legislatures and their delegates, state administrative agencies, through the prescription of utility rates. Indeed, many of the pronouncements of this Court on the subject have been, from time to time, directly reflected in state ratemaking statutes.

However, beginning in the mid-1970's, the nation experienced strident opposition in some quarters to nuclear

---

[1] *See, e.g., Southwestern Bell Telephone Co. v. State Corporation Commission*, 192 Kan. 39, 386 P.2d 515, 530, 533, 547 (Kan. 1963); *Capital Transit Co. v. Public Utilities Commission of the District of Columbia*, 93 U.S. App. D.C. 194, 213 F.2d 176, 184, 186 (D.C. Cir. 1953), *cert. denied*, 348 U.S. 816 (1954).

power plants, rapid inflation, the OPEC monopolistic pricing of oil (and the attendant increases in the prices of other fuels), and, in response to higher prices, a reduction in the growth of demand for electricity. These forces combined to cause state governmental leaders, legislators and, not surprisingly, rate regulators to search for an escape from approving utility rate requests that resulted in ever-increasing customer rates.[2] Some state commissions found an escape, shunting aside constitutional constraints on public utility ratemaking. These developments are now producing a result in which state rate regulation often is tantamount to a massive confiscation of capital provided by utility investors.

The Kansas Court purported to recognize that the *Hope* decision was the "leading case in this area" (Appellants' Appendix A-9a) and that in *Permian Basin* this Court held that the "just and reasonable" standard of the Natural Gas Act as applied in *Hope* "coincides" with the applicable constitutional standards (A-10a). Nevertheless, by misapplying *Hope* and such later cases as *Memphis Light* (A-12a), the Kansas Court reached conclusions contrary to the holdings in *Hope*, *Permian Basin* and *Memphis Light*.

Specifically, neither the KCC nor the Kansas Court ever addressed the issues presented to them in terms of the balance between customer and investor interests required by *Hope*. At no point did they even refer to, let alone determine, the question of whether the rates and disallowances prescribed by the KCC were necessary to prevent "exploitation" (*Hope*, *supra*, 320 U.S. at 610)[3]

---

[2] Approximately 90 percent of electric utility revenues are, and for many years have been, controlled by tariffs prescribed by state ratemaking bodies.

[3] In light of the Court's reference in *Hope* (320 U.S. at 603) to the concurring opinion of Justice Brandeis in *Southwestern Bell Telephone Co. v. Missouri*, 262 U.S. 276, 291 (1923), it appears that the Court viewed "exploitative" rates as those synonymous with rates that are "prohibitive, exorbitant, or unduly burdensome to the public." *Id.* at 290 n.2.

of KGE or KCPL customers or to serve some other identified public interest. Likewise, at no point did they specifically address the question whether the rates prescribed by the KCC would result in "enough revenue not only for operating expenses but also for the capital costs of the business [which] include service on the debt and dividends on the stock" (*id.* at 603)—despite the fact that had they thought about it, they certainly must have recognized that such rates could not produce sufficient revenues for those purposes.

The investor components of the ratemaking equation were clearly stated by this Court in *Hope* and its progeny, leaving no doubt as to what is required. Writing for the majority in *Hope*, Justice Douglas stated that the rates prescribed by the Federal Power Commission (FPC) should:

> enable the company to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed.

320 U.S. at 605. *See also Panhandle Eastern Pipe Line Co. v. Federal Power Commission*, 324 U.S. 635, 649-50 (1945) (Douglas, J.).

Similarly, Justice Douglas, speaking once again for the Court in *Colorado Interstate Co. v. Federal Power Commission*, 324 U.S. 581, 605 (1945), was insistent that *Hope* did not prescribe:

> . . . a standard so vague and devoid of meaning as to render judicial review a perfunctory process. *It is a standard of finance resting on stubborn facts.*

(Emphasis supplied.) Moreover, in *Permian Basin* this Court reiterated the investor components of the *Hope* criteria in finding that the FPC had properly established rates. See, *e.g.*, 390 U.S. at 805-12.

Hope and its progeny did remove the constraints of particular ratemaking methodologies and formulas which this Court had previously imposed on ratemaking bodies. As a consequence, a ratemaking body has been free to

employ any methods or formulas which it chooses. However, the correlative responsibility of such freedom is that the methods and formulas selected by the ratemaking body must demonstrably produce a result consistent with the balance prescribed by *Hope*. It is not enough for the state ratemaking body to use catch phrases, such as "risk sharing," "balancing of interests," or the like. Rather, that body must test the methods and formulas which *it* chooses against the "standard of finance resting on stubborn facts," and if the results do not meet that standard, that body must go back to the drawing board.

This Court stated in *Permian Basin*, *supra*, 390 U.S. at 792:

> [T]he court must determine whether the order may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable. The court's responsibility is not to supplant the Commission's balance of these interests with one more nearly to its liking, but instead to assure itself that the Commission has given reasoned consideration to each of the pertinent factors. Judicial review of the Commission's orders will therefore function accurately and and efficaciously only if the Commission indicates fully and carefully the methods by which, and the purposes for which, it has chosen to act, as well as its assessment of the consequences of its orders for the character and future development of the industry.

As indicated in appellants' jurisdictional statements, the effect of the disallowances of KGE's and KCPL's shares of their investment in Wolf Creek was to reduce to less than 25 percent the portion of prudent investment on which the companies were permitted to earn a current return. The KCC and the Kansas Court did *not* find that the revenues resulting from such rate base allowances would be sufficient to provide "service on the debt," let alone "dividends on the stock," issued by KGE

and KCPL for Wolf Creek. Such a finding would have been impossible. Perhaps for this reason, the KCC and the Kansas Court did not address that issue, notwithstanding the requirements of *Hope*.[4]

The ultimate question presented by these appeals is whether, assuming that such rates would not be exploitative of customers or otherwise inconsistent with the public interest, a state ratemaking body is required by the Constitution to take investor interests into account in fixing rates. The question is substantial in terms of the magnitude of the dollars involved, the current pervasiveness of the issue in rate regulatory proceedings throughout the nation, and its impact on future power supply in the United States and on the very institution of rate regulation itself.

Although this Court has not directly addressed this question in recent years, the compelling thrust of its ratemaking decisions over the past century, beginning with the *Railroad Commission Cases* and continuing with the *Permian Basin* and *Memphis Light* decisions, is that this *is* a federal question to which the answer must be in the affirmative. However, the state courts and commissions clearly require a more current reminder of that fact. In particular, the KCC, among other state commissions, represented to this Court just last term

---

[4] If KGE's or KCPL's investment in Wolf Creek had been made by a separate corporate entity with its own securities outstanding in the hands of the public, the consequence of the KCC decisions would be clearly apparent. Such a separate corporation would not have sufficient revenues to enable it to avoid default on its debt service obligations, let alone to meet its preferred and common stock requirements. Only because KGE's and KCPL's investments in Wolf Creek are part of total company assets—and, correspondingly, are only a part of the companies' total outstanding securities—is the effect of the KCC orders somewhat obscured. The fact is that default on the securities issued by KGE and KCPL to finance their interests in Wolf Creek is being avoided only by appropriating to that purpose return realized by the companies' on their other assets.

that the Fourteenth Amendment necessarily represents a check on the power of the states to set rates at what would amount to confiscatory levels. *See Louisiana Public Service Commission v. Federal Communications Commission*, —— U.S. ——, 106 S.Ct. 1890, 1893 (1986). The decisions of the KCC in this case belie its earlier assurances to this Court and point to the necessity for the Court to take jurisdiction and to reaffirm the principles of *Hope*.

II. These Appeals Are Stark Examples Of The National Trend Of Recent Unconstitutional State Ratemaking Disallowances.

These appeals arise out of requests by KGE and KCPL in November 1984 to the KCC for authorization of increased rates, largely to reflect the companies' increased operating and capital costs (less the savings in their fuel costs[5]) associated with their respective 47 percent tenancy-in-common ownership interests in the Wolf Creek nuclear generating station. More fundamentally, however, the Kansas Court recognized (at A-6a and A-9a, respectively):

> The legal issues presented in this case are not peculiar to Kansas but are the result of the national controversy over the construction of nuclear power plants which has developed over the past thirty years.
>
> * * * *
>
> Where a nuclear plant had been completed and placed in operation, the state regulatory agency had the problem of determining whether the inflated construction costs of a nuclear facility had to be included in the rate base in a manner which would financially

[5] Even though the KCC decisions allow less than one-fourth of KGE's and KCPL's shares of prudent investment in Wolf Creek for rate of return purposes, the companies have passed along to their customers through fuel adjustment clauses 100 percent of the fuel cost savings attributable to the unit. With the unit operating at nearly a 90 percent capacity factor, KGE has already passed on $44.8 million in fuel cost savings to its customers.

hurt the ratepayers, the consumers, and the general public.[6] It is this same basic problem which was faced by the KCC in the case now before us.

The issue of whether a state ratemaking body is required by the Constitution to take investor interests into account in fixing rates has arisen in recent years primarily in three different contexts:

* (1) The rate treatment to be accorded to the capital and operating costs of those nuclear generating units which, like the Wolf Creek unit, either have been completed and placed in service or are expected to attain that status in the near future (collectively, "the completed nuclear units");

* (2) The rate treatment to be accorded to the capital costs of those nuclear units which have been abandoned prior to completion (collectively, "the abandoned nuclear units"); and

* (3) The rate treatment to be accorded to the capital costs of those nuclear units which for various reasons are not providing service (collectively, "the non-operating nuclear units").

The issues in these appeals involve only those relating to the "completed" and operating nuclear units (Category 1 above), and have not heretofore been presented to this Court in that context.

Between the end of 1982 and the end of 1986, 25 nuclear generating units (including Wolf Creek) were completed, 22 of which have gone into commercial opera-

---

[6] The Kansas Court would appear by this statement to have unthinkingly equated the phrase "financially hurt the ratepayers" with the very different standard of "exploitative rates." See p. 8 n.3, *supra*. Moreover, this analysis is inconsistent with *Hope* because it wholly ignores the legitimate interests of investors who supplied capital (in no small part because of state statutory requirements and federal and state governmental policies) and because it fails to recognize that the KCC had a constitutional obligation to balance and harmonize the interests in a meaningful manner. This would have been a relatively straightforward task if the KCC and Kansas Court had been so inclined.

tion.[7] Of the 23 units listed in Table 1 of Appendix A, eight units, involving an aggregate investment of about $14.5 billion, were reflected in rates without significant disallowances by state ratemaking agencies. The remaining 15 units in Table 1 (including Wolf Creek[8]), for which regulatory decisions were complete by December 1986, involved an aggregate investment in excess of $40.2 billion. These units were subjected to rate base, expense or return disallowances aggregating conservatively to at least $6.4 billion. These disallowances amount to about 12 percent of total booked costs of these first two groups of nuclear units (those with and without disallowances) and 16 percent of the total booked costs of only those nuclear units with disallowances.

For four other units (two of which had been subject to rate decisions involving utility co-owners in another state; see Table 1 n.7), which are listed in Table 2 of Appendix A and involve an aggregate investment in excess of $6 billion, the regulatory decisions were not complete as of December 1986. However, if disallowances similar in kind to Wolf Creek and to the other cases cited above were to prevail, the resulting disallowances would amount to billions of dollars.

In addition, at this time there remain 18 nuclear units under construction or not yet in commercial operation with an estimated total cost of more than $59.5 billion.[9] Even assuming that all these units are completed and that the regulatory treatment of such units is no worse

---

[7] There is annexed as Appendix A two tables identifying these units and summarizing the rate treatment discussed in the text.

[8] In the Wolf Creek case, some of the disallowances were for current return purposes only and, for purposes of comparison with the other units in Appendix A, are stated in a way which recognizes that some carrying charges are being permitted to accrue.

[9] There is annexed as Appendix B a tabulation of these units and their estimated cost.

than that for the previously completed units—a trend which we fervently hope does not come to pass—investors could be expected to lose billions of dollars of their investment.

On this basis, the total disallowances for present and future completed nuclear units would aggregate to many billions of dollars of investor capital. The burden of these disallowances must fall on the common stock equity investment in companies with these nuclear units. Approximately 35-45 percent of the investment in the electric utility industry takes the form of common stock equity. In the companies with nuclear units subject to these disallowances, the investment in common stock equity totaled about $85 billion as of September 30, 1986. Therefore, the billions of dollars in total disallowances could represent a permanent economic loss of current return on a substantial portion of these companies' total common stock equity. Indeed, depending upon the period for which the disallowances remain in effect, the result of such disallowances may be to wipe out these companies' common stock equity. This would seriously undermine the regulatory compact which has been the basis of electric utility rate regulation in this country for more than four decades.

III. The Kansas Court's Affirmance Of The KCC Orders Abrogates The Compact Underlying The American System Of Utility Rate Regulation.

Like most statutes providing for utility rate regulation, the Kansas Public Utilities Act has long required that electric utilities operating in Kansas furnish reliable and adequate service to existing and future customers and construct facilities for that purpose.[10] Despite recent amendments directed at the Wolf Creek unit, the Kansas statute still reflects in large part the implicit bargain between utility investors and consumers that

---

[10] See K.S.A. § 66-101b (A-1j through A-2j). The public utility laws of most states impose comparable requirements.

underlies electric utility regulation. This bargain has been recently described by Dr. Alfred H. Kahn, a leading regulatory economist and former chairman of the Civil Aeronautics Board and of the New York Public Service Commission, who points out: [11]

> The essential basis of public-utility regulation is an implicit bargain between consumers and investors that, in exchange for a monopoly franchise, the company accepts the strict legal obligation to serve all customers on reasonable terms. This means that shareholders accept a return on investment equivalent only to something like the market cost of capital—the minimum that investors must see a reasonable prospect of earning if they are to put up the necessary funds—along with the duty conscientiously to anticipate the future needs of the public and to make whatever investments may be necessary in order to meet them efficiently.
>
> This means that if the company makes a particularly successful investment—and there have been many such—the lion's share of the benefit goes to to the consumer. . . .
>
> The other side of the bargain is, and has to be, that investors are permitted to earn that same minimum return also on the dollars that they put into investments that turn out sour. If they can earn the cost of capital only on the successes and not on the failures, it follows that they will earn less than the cost of capital on all their dollars, taken together. And investors won't play that game once they understand that those are going to be the rules.
>
> That does not mean consumers have to bear the costs of grossly imprudent ventures; that is the justification for public utility commissions determining the prudency of utility investments. No investors can legitimately expect that. But the only test of prudence consistent with the regulatory bargain has to be as of the time the commitments were made.

---

[11] *Wall Street Journal*, Aug. 15, 1985, at 26, col. 3.

In light of their obligation to provide reliable and economic service, KGE and KCPL were required to examine the feasibility and financial consequences of employing nuclear energy. The express national policies promoting nuclear power and discouraging the use of natural gas or imported oil for electric boiler fuel, coupled with the financial and environmental benefits from nuclear generation, virtually assured the selection of the nuclear option. Indeed, if the almost universal forecasts had come true, KGE and KCPL would have been justifiably criticized if they had not selected the nuclear option.

Similarly, the rapid growth in electric demand (approximately seven percent per year compounded, or a doubling within a decade) preceding the decision to go forward with Wolf Creek created concern about potential shortages—not excesses—of generating capacity. Nor were KGE and KCPL alone in this regard. On the contrary, as the Kansas Court recognized, "[b]etween 1965 and 1975, the nuclear industry was perhaps the fastest growing major industry in the United States" (A-6a).

This was the general experience of utilities constructing nuclear units during this same time period, whether they were agencies of the United States (such as the Tennessee Valley Authority) or the states (such as the Washington Public Power Supply System), rural electric cooperatives, or investor-owned electric utilities. Recognition that appellants were at all times laboring to uphold their end of the implicit bargain when constructing the Wolf Creek plant is critical. They were pursuing what was and continues to be the most attractive alternative.[12] Neither the KCC nor the Kansas Court held that KGE and KCPL should not have undertaken

---

[12] Indeed, in view of the lower fuel and operating costs of Wolf Creek, the KCC could not conclude in its orders that over the life of the unit it would not produce a net benefit to the companies' customers (even given its higher construction cost compared to other types of generating plant). See A-99f.

Wolf Creek. On the contrary, as dissenting Chief Justice Schroeder of the Kansas Court pointed out, counsel for the KCC admitted that the initial decision of the utilities to build a nuclear plant at Wolf Creek was not imprudent (A-47a).

At some point over the eight-year construction cycle of Wolf Creek, circumstances changed. The fallout of the oil embargo and OPEC pricing actions of the 1970's had radically changed the American energy markets, and growth forecasts proved overly optimistic. The accident at Three Mile Island (TMI) and subsequent overhaul of NRC licensing and safety requirements delayed licensing and imposed major new and costly safety measures. Post-TMI changes alone were shown before the Kansas Court to have cost appellants $544 per Kw, *i.e.*, conservatively, at least 54 percent of the increase in construction costs for Wolf Creek were attributable to NRC licensing and safety requirements.[13]

As the Wolf Creek plant neared completion, opponents of the plant girded themselves for battle and worked diligently at the state level to minimize the amount of the costs of the plant to be charged to ratepayers. Seven years after construction of Wolf Creek began in 1977, the Kansas legislature enacted legislation referred to by one commentator as "The Wolf Creek Excess Cost-Excess Capacity Bill." 33 U. KAN. L. REV. 475 (1985).[14] Moreover, as Chief Justice Schroeder observed:

> The KCC, from the time of its initial investigation into the cost overruns at the Wolf Creek plant in 1979, began loading its guns with ammunition for bear to ambush the utilities with rate orders it eventually entered, after the utilities applied to the KCC to authorize a rate increase.

---

[13] See Brief for KCPL at 92, *Kansas Gas & Electric Co. v. State Corporation Commission of Kansas*, 239 Kan. 483, 720 P.2d 1063 (Kan. 1986).

[14] *See* K.S.A. §§ 66-128 through 66-128k, as amended by K.S.A. §§ 66-101 *et seq.* (A-1j through A-9j).

(A-48a). Clearly, the regulatory bargain has disintegrated in Kansas. Notwithstanding the utilities' good faith efforts to assure a safe and reliable future power supply for consumers, and reliance upon federal and state law, the KCC decisions in no uncertain terms imposed a massive and unjustifiable regulatory penalty on appellants for what the KCC determined *ex post facto* to be unsatisfactory. The KCC decisions thus effected a confiscation of the utilities' property in violation of the principles expressed by this Court in *Hope* and of the Fourteenth Amendment.

As Dr. Kahn points out, regulatory abrogation of the implicit bargain between consumers and investors deprives the latter of the opportunity to recover the cost of capital. Moreover, the failure to abide by the principles articulated in *Hope* will raise the cost of capital in the long run, thus increasing rates and harming the very customers that the KCC believes it is protecting. The implications of these consequences on a national scale are grave and lend further support to the need for plenary consideration by this Court.

CONCLUSION

EEI joins KGE and KCPL in the belief that the questions raised by their appeals are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

ROBERT L. BAUM
Counsel of Record
PETER B. KELSEY
WILLIAM L. FANG
JAMES H. BYRD
EDISON ELECTRIC INSTITUTE
1111 19th Street, N.W.
Washington, D.C. 20036
(202) 778-6500

January 15, 1987

APPENDICES

Table 1: Final Ratemaking Treatment for Completed Nuclear Plants

APPENDIX A

Name of Plant	Sunk Costs[1] ($000,000)	Name of Utility	Jurisdiction	AMOUNT OF DISALLOWANCES ($000,000) Imprudence	Excess Capacity	Cost Caps	Economic Value	Other
Units in Commercial Operation (Since 01/01/83 Only)								
Byron 1	$ 2,558	Commonwealth Edison	IL	$ 102	$ 0	$ 0	$ 0	$ 0
Callaway	3,070	Union Electric Company	IL	30	0	0	0	0
Callaway		Union Electric Company	IA	8	0	0	0	0
Callaway		Union Electric Company	MO	384	0	0	0	0
Catawba 1	1,917	Duke Power Company	NC	0	0	0	0	0
Catawba 1		Duke Power Company	SC	0	0	0	0	0
Catawba 2	1,477	Duke Power Company	NC	0	0	0	0	0
Catawba 2		Duke Power Company	SC	0	0	0	0	0
Grand Gulf 1	3,281	Arkansas Power & Light Co.	AR	0	0	0	0	-[2]
Grand Gulf 1		Arkansas Power & Light Co.	MO	0	0	0	0	0
Grand Gulf 1		Louisiana Power & Light Co.	LA	0	0	0	0	-[2]
Grand Gulf 1		Mississippi Power & Light Co.	MS	0	0	0	0	0
Grand Gulf 1		New Orleans Public Service Inc.	Municipal	0	0	0	0	49[3]
LaSalle 1	1,377	Commonwealth Edison Company	IL	0	0	0	0	0
LaSalle 2	1,081	Commonwealth Edison Company	IL	0	0	0	0	0
Limerick 1	3,820	Philadelphia Electric Co.	PA	369	0	0	0	0
McGuire 2	1,083	Duke Power Company	NC	0	0	0	0	0
McGuire 2		Duke Power Company	SC	0	0	0	0	0
Millstone 3	3,825	Central Maine Power Company	ME	0	0	0	0	7[4]
Millstone 3		Central Vermont Pub. Serv. Corp.	VT	0	0	0	0	0
Millstone 3		Connecticut Light & Power Co.	CT	0	0	147[5]	0	72[6]
Millstone 3		United Illuminating Company	CT	0	0	15[5]	0	3[6]
Millstone 3		West. Massachusetts Elec. Co.	MA	0	0	0	109	0
Palo Verde 1	-- [7]	Arizona Public Service Co.	AZ	-[8]	0	0	0	0
Palo Verde 1		El Paso Electric Company	NM	0	0	0	0	0
Palo Verde 1		Southern California Edison	CA	-[9]	0	0	0	0
Palo Verde 2	-- [7]	Southern California Edison	CA	-[9]	0	0	0	0
St. Lucie 2	1,465	Florida Power & Light	FL	0	0	0	0	0
San Onofre 2 & 3	4,491[10]	San Diego Gas & Electric	CA	69[10]	0	0	0	0
San Onofre 2 & 3		Southern California Edison Co.	CA	259[10]	0	0	0	0
Summer 1	1,283	South Carolina Electric & Gas	SC	0	123[11]	0	0	0
Susquehanna 1	1,941	Pennsylvania Power & Light	PA	0	287[11]	0	0	0
Susquehanna 2	2,130	Pennsylvania Power & Light	PA	0	522[12]	0	0	38[13]
Waterford 3	2,840	Louisiana Power & Light Co.	LA	0	0	0	0	284[14]
Wolf Creek	2,992	Kansas City Power & Light	KS	40	221	0	68	0
Wolf Creek		Kansas City Power & Light	MO	126	33	0	0	0
Wolf Creek		Kansas Gas & Electric Co.	KS	125	716	0	194	0
Subtotals:	$40,631			$1,512	$1,902	$ 162	$ 371	$ 453

Name of Plant	Sunk Costs ($000,000)	Name of Utility	Ju di
			Units with
Fermi 2	$ 3,762	Detroit Edison Co.	
			Units with Fuel Loa
Nine Mile Point 2	5,900[16/]	Central Hudson Gas & Elec. Corp.	
Nine Mile Point 2		Long Island Lighting Co.	
Nine Mile Point 2		New York State Elec. & Gas Corp.	
Nine Mile Point 2		Niagara-Mohawk Power Corp.	
Nine Mile Point 2		Rochester Gas & Elec. Corp.	
Shoreham	4,392	Long Island Lighting Co.	
Totals:	$54,685		

1/ Except as otherwise indicated, source of these data is the Plant Construction Activity, 1985, DOE/EIA-0473(85).

2/ It is not possible to quantify the amount of the substantia between Arkansas Power & Light Co. (AP&L) and the Arkansas the Louisiana PSL, because they are disallowances of percen a Federal Regulatory Commission (FERC) approved wholesale r Utilities (MSU) holding company system owns Grand Gulf. Th through sales of power to, inter alia, AP&L, LP&L and other

3/ New Orleans Power Service Inc. (NOPSI) agreed, in a settlem regulating its rates, to forego recovery from ratepayers of incurred for purchases of Grand Gulf power.

4/ Settlement agreement provides for disallowance of 15% of th

5/ Effect of Connecticut statutory cost cap.

6/ Incremental disallowance, in addition to disallowance impos agreement.

7/ Because of accounting methodology used by various owners of available. Unit also listed on Table 2 for companies and j incomplete.

AMOUNT OF DISALLOWANCES ($000,000)

ris-ction	Imprudence	Excess Capacity	Cost Caps	Economic Value	Other
Full Power Operating Licenses					
MI	$ 397	$ 283[15]	$ 0	$ 0	$ 0
ad or Low Power Operating Licenses					
NY	0	0	[17]	0	[17]
NY	0	0	[17]	0	[17]
NY	0	0	[17]	0	[17]
NY	0	0	[17]	0	[17]
NY	0	0	[17]	0	[17]
NY	1,395	0	0	0	0
	$3,304	$2,185	$ 162	$ 371	$ 453

U.S. Department of Energy publication, Nuclear Power

l disallowances agreed to in stipulation agreements
PSC, or between Louisiana Power & Light Co. (LP&L) and
ntages of total operating expenses incurred pursuant to
rate. A generating subsidiary of the Middle South
e subsidiary will recover its investment in the plant
MSU operating subsidiaries.

ent with the New Orleans Council, the body which
this amount of deferred expense which NOPSI had

e investment.

ed by statutory cost cap, provided for by settlement

this project, no total estimated cost numbers are
urisdictions where final ratemaking treatment is

8/ The commission made no disallowance, in this rate case, of $210,000,000 of the Palo Verde No. 1 investment in Ar to refund, pending completion of the commission's pruden

9/ An October, 1986 stipulation agreement provides that dis investment in the three Palo Verde units (the third is n San Onofre Nos. 2 and 3. On the basis of the California investigation, SCE calculates that disallowances for all amount is subject to change if the amount of San Onofre progress) or appeal. No breakdown by unit is available.

10/ The total cost of these two units, and the total disallo PUC issues only one final order on the prudence of the i disallowances for each unit. These amounts represent Sa Edison Co.'s shares of the entire $344,600,000 disallowa utilities, which are not subject to PUC jurisdiction in Unit 2, $1,796,200,000 for Unit 3.
(Unit 1 was completed in 1968.)

11/ This adjustment is a "slice of system" adjustment, i.e., generating units. It is listed here in toto because the excess capacity were precipitated by the addition of the

12/ In this rate case order, the Pennsylvania PUC disallowed investment in Susquehanna 2. The disallowance shown has jurisdictional investment in the unit ($1,494,800,000) b

13/ Disallowance of the cost of a short-term buy-back by Pen interest in the unit. The buy-back was provided for in

14/ Per stipulation agreement.

15/ Investment in other generating plant which will, pursuan recent rate case, be excluded from rate base as excess c

16/ Latest estimate from Niagara Mohawk Power Corp. does not with the plant's main steam isolation valves.

17/ According to a stipulation agreement approved by the New the prudence of the investment. The agreement provides plant's five co-tenants' rate bases will total $4,160,00 earlier by the PSC had been to limit the plant's recover incremental disallowances agreed to in the stipulation h table, because substantial problems of interpretation ha covered by the agreement.

for imprudence. However, rates attributable to inclusion
izona Public Service's rate base remain in effect subject
ce review.

allowances to Southern California Edison Co.'s (SCE)
ot yet completed) shall equal 19.33% of disallowances for
PUC's subsequent final order in the San Onofre prudence
three Palo Verde units should total $50,000,000. This
imprudence disallowance changes on rehearing (currently in

wance thereto, have been combined because the California
nvestment in both units, and did not fully separate the
n Diego Gas & Electric Co's. and Southern California
nce. (The remainder is allocable to non-investor-owned
California.) Total cost per unit is $2,694,300,000 for

it is applied to equal portions of each of the utility's
high reserve margins which resulted in a finding of
new unit.

a return on the common equity component of the utility's
been calculated by multiplying the utility's
y the common equity ratio used in the case (34.9).

nsylvania Power & Light Co., of Allegheny Electric Coop's
the earlier contract for sale of Susquehanna 2 capacity.

t to the Michigan PSC's order in Detroit Edison's most
apacity when Fermi 2 enters commercial operation.

include costs attributed to recently discovered problems

York PSC in August, 1986, ending an investigation into
that the amount of the investment to be included in the
0,000. The effect of two successive cost caps ordered
able cost to approximately $5,200,000,000. The
ave not been apportioned among the co-tenants in this
ve arisen, and it is not clear exactly what plant is

Table 2: Utility Investment in Completed Nuclear Plants in Commercial Operation for Which Rate Action is Pending

Plant	Sunk Costs ($000,000)	Utility	Jurisdiction
Diablo Canyon 1	$3,315	Pacific Gas & Electric Co.	CA
Diablo Canyon 2	2,599	Pacific Gas & Electric Co.	CA
Palo Verde 1	—[1]	El Paso Electric Co.	TX
Palo Verde 1		Public Service Co. of N.M.	NM
Palo Verde 2	—[1]	Arizona Public Service Co.	AZ
Palo Verde 2		El Paso Electric Co.	NM
Palo Verde 2		El Paso Electric Co.	TX
Palo Verde 2		Public Service Co. of N.M.	NM
	$5,914		

[1] Because of accounting methodology used by various owners of this project, no total estimated cost numbers are available. Unit also listed on Table 1 for co-owners and jurisdictions in which final ratemaking treatment has been decided.

Source: *Nuclear Power Plant Construction Activities 1985*-DOE/EIA-0473(85)

APPENDIX B

Table 3: Utility Investment in Nuclear Plants Under Construction or Not Yet in Commercial Operation and Accorded Final Ratemaking Treatment

Utility	Plant	Estimated Final Costs ($000,000)
Arizona Public Service Co.[1]	Palo Verde 3	$ 1,591[2]
Commonwealth Edison Company	Braidwood 1	2,908
Commonwealth Edison Company	Braidwood 2	2,100
Commonwealth Edison Company	Byron 2	2,056
Georgia Power Company	Vogtle 1	6,051
Georgia Power Company	Vogtle 2	2,295
Illinois Power Company	Clinton 1	3,766
Gulf States Utility Company	River Bend 1	3,614
Pub. Service Elec. & Gas Co.[3]	Hope Creek 1	4,180
Pub. Service Company of N.H.[4]	Seabrook 1	4,561
Carolina Power & Light Co.	Shearon Harris 1	3,626
Duquesne Light Company [5]	Beaver Valley 2	4,324
Philadelphia Electric Co.	Limerick 2	3,197
Houston Lighting & Power Co.[6]	S. Texas Project 1	5,495[7]
Houston Lighting & Power Co.[6]	S. Texas Project 2	—
Texas Utilities	Commanche Peak 1	5,465[7]
Texas Utilities	Commanche Peak 2	—
Cleveland Electric Illuminating Co.[8]	Perry 1	4,223
		$59,452

[1] Other utility company owners include El Paso Electric Company, Southern California Edison Company and Public Service Company of New Mexico.

[2] Amount does not include Allowance for Funds Used During Construction (AFUDC).

[3] Jointly owned with Atlantic City Electric Company.

[4] Jointly owned with United Illuminating Company, New England Power Company, EUA Power Corp., Connecticut Light & Power Company and Commonwealth Electric Company.

[5] Jointly owned with Ohio Edison Company, Cleveland Electric Illuminating Company and Toledo Edison Company.

[6] Jointly owned with Central Power & Light Company.

[7] Cost data are sums for both units at the site.

[8] Jointly owned with Ohio Edison Company, Pennsylvania Power Company, Duquesne Light Company and Toledo Edison Company.

Source: *Nuclear Power Plant Construction Activities 1985*-DOE/EIA-0473(85)